

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ARCHIE RACHEL,

Plaintiff,

v.

JEFFERY TROUTT, et al.,

Defendants.

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Case No. CIV-14-655-R

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing pro se, brings this action under 42 U.S.C. § 1983, alleging violations of his constitutional rights. The matter has been referred by United States District Judge David R. Russell to the undersigned magistrate judge for preliminary review, for conducting any necessary hearings, including evidentiary hearings, for the entry of appropriate orders as to non-dispositive matters, and for the preparation and submission of proposed findings and recommendations as to dispositive matters referenced in 28 U.S.C. § 636(b)(1)(B) and (C). Upon preliminary review, it is recommended that Plaintiff's claims against Defendants in their official capacities be **DISMISSED WITHOUT PREJUDICE** and without leave to amend.

Pursuant to 28 U.S.C. § 1915A, this Court must review complaints filed in civil actions by prisoners seeking redress from a governmental entity or officer or employee of a governmental entity. After conducting the initial review, this Court must dismiss the complaint, or any portion of the complaint, which is frivolous, malicious or fails to state

a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)-(2); *see also* 1915(e)(2)(B)(ii) (dismissal of a complaint filed *in forma pauperis* is proper for failure to state a claim upon which relief may be granted); *Young v. Davis*, 554 F.3d 1254, 1256 (10th Cir. 2009). As with a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court must accept Plaintiff's allegations as true and construe them, and any reasonable inferences to be drawn from them, in the light most favorable to Plaintiff. *See Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007).

The Supreme Court has interpreted the Eleventh Amendment to mean "States may not be sued in federal court unless they consent to it in unequivocal terms or unless Congress, pursuant to a valid exercise of power, unequivocally expresses its intent to abrogate the immunity." *Muscogee (Creek) Nation v. Oklahoma Tax Com'n*, 611 F.3d 1222, 1227 (10th Cir. 2010) (quoting *Green v. Mansour*, 474 U.S. 64, 68 (1985)). Moreover, suits against state officials acting in their official capacities fall within the amendment's proscription because "a suit against a state official in his or her official capacity ... is no different than a suit against the State itself." *Muscogee (Creek) Nation*, 611 F.3d at 1227 (quoting *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 71 (1989)).

Accordingly, it is recommended that all of Plaintiff's claims against Defendant Dowling in her official capacity, Defendant Harris in her official capacity, Defendant Troutt in his official capacity, and Defendant Katryna Frech in her official capacity, be

dismissed without prejudice. Because the defect cannot be cured through an amendment to the complaint in this case, the dismissal should be without leave to amend.

RECOMMENDATION

It is recommended that Plaintiff's claims against **Defendants Dowling, Troutt, Frech, and Harris in their official capacities be DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. §§ 1915 and 1915A. The parties are advised of their right to file specific written objections to this Report and Recommendation. See 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Any such objections must be filed with Clerk of the District Court by **September 11, 2014**. The parties are further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

STATUS OF THE REFERRAL

This Report and Recommendation **DOES NOT** dispose of all issues referred to the undersigned Magistrate Judge in this matter.

ENTERED on August 25, 2014.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE